

**COPY**

L-23492

#02595532

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

701-0039

WISCONSIN CENTRAL LTD., )  
an Illinois corporation, )

Plaintiff, )

vs. )

THE CITY OF DES PLAINES, an )  
Illinois municipal corporation )  
KEVIN K. WRIGHT, TERRY S. HARVIL )  
EDWARD C. HURLEY and MARY )  
FRANCES SQUIRES, in their )  
capacity as Commissioners of )  
the Illinois Commerce )  
Commission, )

Defendants. )

----- )  
UNION PACIFIC RAILROAD )  
COMPANY, a Delaware )  
corporation, )

Plaintiff, )

vs. )

THE CITY OF DES PLAINES, an )  
Illinois municipal corporation )  
KEVIN K. WRIGHT, TERRY S. HARVIL )  
EDWARD C. HURLEY and MARY )  
FRANCES SQUIRES, in their )  
capacity as Commissioners of )  
the Illinois Commerce )  
Commission, )

Defendants. )

**RECEIVED**

FEB 24 2003

MICHAEL W. DOBINS  
CLERK, U.S. DISTRICT COURT

CASE NO. 03 C 00060

JUDGE ZAGEL

MAGISTRATE JUDGE GERALDINE  
SOAT BROWN

**RECEIVED**  
FEB 27 2003

Illinois Commerce Commission  
RAIL SAFETY SECTION

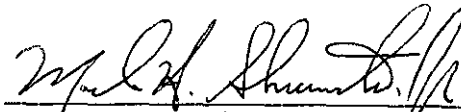
NOTICE OF MOTION

To: See Service List attached

On March 6, 2003, at 10:15 a.m., or as  
soon thereafter as counsel may be heard, I shall appear before the  
Honorable Judge Zagel presiding in Room 2503 of the United States  
District Court for the Northern District of Illinois, Eastern  
Division, and present Plaintiff Union Pacific Railroad Company's

**DOCKETED**

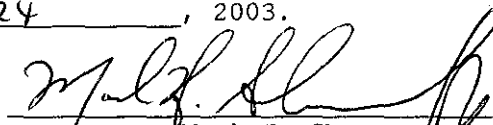
Motion For Reassignment and Consolidation of Related Cases Pursuant to  
28 U.S.C.A. Rule 42 and Local Rule 40.4(c), instanter.

  
Mack H. Shumate, Jr.

Mack H. Shumate, Jr. (#02595532)  
Attorney for Plaintiff  
Union Pacific Railroad Company  
101 North Wacker Drive, Room 1920  
Chicago, IL 60606  
(312)777-2055

**PROOF OF SERVICE BY MAIL**

I, Mack H. Shumate, Jr., the attorney, certify that I served this  
notice by mailing a copy to the above attorneys at the address shown above  
and deposited the same in the U.S. mail at 101 North Wacker Drive, Chicago,  
IL, at 5:00 p.m. on February 24, 2003.

  
Mack H. Shumate, Jr.

**Union Pacific Railroad Company**  
**v.**  
**City of Des Plaines, Kevin K. Wright, Terry S. Harvil,**  
**Edward C. Hurley and Mary Frances Squires**

**Court No. 03 C 00555**

**Service List:**

David R. Wiltse, Esq.  
City Attorney  
CITY OF DES PLAINES  
1420 Miner  
Des Plaines, IL 60016-4498

Kevin K. Wright  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701

Terry S. Harvil  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701

Edward C. Hurley  
Illinois Commerce Commission  
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Mary Frances Squires  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701

James A. Fletcher, Esq.  
Fletcher & Sippel  
Two Prudential Plaza, Suite #3125  
180 North Stetson Avenue  
Chicago, IL 60601-6721

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701-0039

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
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WISCONSIN CENTRAL LTD., )  
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Plaintiff, )

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THE CITY OF DES PLAINES, an )  
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KEVIN K. WRIGHT, TERRY S. )  
HARVIL, EDWARD C. HURLEY and )  
MARY FRANCES SQUIRES, in their )  
capacity as Commissioners of )  
the Illinois Commerce )  
Commission, )

Defendants. )

----- )  
UNION PACIFIC RAILROAD )  
COMPANY, a Delaware )  
corporation, )

Plaintiff, )

vs. )

THE CITY OF DES PLAINES, an )  
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KEVIN K. WRIGHT, TERRY S. )  
HARVIL, EDWARD C. HURLEY and )  
MARY FRANCES SQUIRES, in their )  
capacity as Commissioners of )  
the Illinois Commerce )  
Commission, )

Defendants. )

FEB 24 2003

MICHAEL W. DORRINS  
CLERK, U.S. DISTRICT COURT

CASE NO. 03 C 00060

JUDGE ZAGEL

MAGISTRATE JUDGE GERALDINE

SOAT BROWN

**RECEIVED**  
FEB 27 2003

Illinois Commerce Commission  
RAIL SAFETY SECTION

CASE NO. 03 C 00555

JUDGE ANDERSEN

MAGISTRATE JUDGE ASHMAN

**DOCKETED**

**PLAINTIFF'S MOTION FOR REASSIGNMENT  
AND CONSOLIDATION OF RELATED CASES  
PURSUANT TO 28 U.S.C.A. RULE 42 AND LOCAL RULE 40.4(c)**

NOW COMES the plaintiff, UNION PACIFIC RAILROAD COMPANY, ("Union Pacific"), by and through its attorney, Mack H. Shumate, Jr., and for its Motion for Reassignment and Consolidation of Related Cases states as follows:

1. Plaintiff, Union Pacific, duly filed its Complaint for Declaratory and Injunctive Relief on January 24, 2003 against the Defendants seeking judgment declaring that 49 U.S.C.A. § 10501(b), as amended by the Interstate Commerce Commission Termination Act, ("ICCTA"), preempts the authority granted to the Illinois Commerce Commission under 625 ILCS § 5/18c-7401 to the extent such authority is used to require plaintiff, at its expense, to replace the Railroad Bridge as proposed by the Illinois Department of Transportation and the City of Des Plaines, Illinois. The case was assigned number 03 C 00555 before Judge Andersen and Magistrate Judge Ashman. A copy of said Complaint is attached hereto as Exhibit "A", hereby made a part hereof and hereinafter referred to as the "Union Pacific Complaint".

2. On or about January 3, 2003, Wisconsin Central, Ltd. ("Wisconsin Central"), a corporation organized under the laws of the state of Illinois, with its principal place of business in Rosemont, Illinois, filed a Complaint for

Declaratory and Injunctive Relief against the City of Des Plaines, an Illinois municipal corporation, and Kevin K. Wright, Terry S. Harvill, Edward C. Hurley and Mary Frances Squires, in their capacities as Commissioners of the Illinois Commerce Commission seeking judgment declaring that 49 U.S.C.A. § 10501(b), as amended by the Interstate Commerce Commission Termination Act, ("ICCTA"), preempts the authority granted to the Illinois Commerce Commission under 625 ILCS § 5/18c-7401 to the extent such authority is used to require plaintiff, at its expense, to replace the Railroad Bridge as proposed by the Illinois Department of Transportation and the City of Des Plaines, Illinois. This complaint was filed in the United States District Court for the Northern District of Illinois, Eastern Division and was assigned Case No. 03 C 00060 before Judge Zagel and Magistrate Judge Geraldine Soat Brown. This complaint was subsequently amended and an Amended Complaint for Declaratory and Injunctive Relief was filed on January 24, 2003. A copy of the Amended Complaint for Declaratory and Injunctive Relief is attached hereto as Exhibit "B", hereby made a part hereof and hereinafter referred to as the "Wisconsin Central Complaint".

3. In accordance with the Federal Rules of Civil Procedure, when actions involving a common question of law or fact are pending before the Court, the Court may order a joint

hearing or trial of any or all of the matters at issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay. 28 U.S.C.A. Rule 42.

4. In accordance with the local rules of the United States District Court of the Northern District of Illinois, Eastern Division, two or more civil cases may be related if one or more of the following conditions are met:

- a. the cases involve the same property;
- b. the cases involve some of the same issues of fact or law;
- c. the cases grow out of the same transaction or occurrence; and
- d. in class suits, one or more of the classes involved in the cases is or are of the same.

See Local Rule 40.4(a).

5. The following four (4) conditions must be met in order for a case to be reassigned:

- a. both cases are pending in this Court;
- b. the handling of both cases by the same Judge is likely to result in a substantial savings of judicial time and effort;
- c. the earlier case has not progressed to a point where designating a later filed case

as related would be likely to delay the proceedings in the earlier case substantially; and

- d. the cases are susceptible of disposition in a single proceeding.

See Local Rule LR40.4(b)

### **Points of Commonality**

The Union Pacific Complaint and the Wisconsin Central Complaint involve the same property, namely the railroad bridge which runs over U.S. Route 14 in the City of Des Plaines, Illinois and the related track structures; the complaints involve similar if not identical issues of fact and law; the complaints grow out of the same occurrences, claims and actions of the City of Des Plaines, Illinois and the Illinois Commerce Commission; and both complaints are seeking judgment declaring that 49 U.S.C.A. § 10501(b), as amended by the Interstate Commerce Commission Termination Act, ("ICCTA"), preempts the authority granted to the Illinois Commerce Commission under 625 ILCS § 5/18c-7401 to the extent such authority is used to require plaintiff, at its expense, to replace the Railroad Bridge as proposed by the Illinois Department of Transportation and the City of Des Plaines, Illinois.



### Conditions for Reassignment

Both the Union Pacific Complaint and the Wisconsin Central Complaint are pending before the United States District Court for the Northern District of Illinois, Eastern Division; the handling of both of these cases by the same Judge is likely to result in a substantial savings of the judicial time and effort required to dispose of these cases; the earlier case filed by Wisconsin Central has not progressed to a point where designating the case filed by Union Pacific would be likely to delay the proceedings in the Wisconsin Central case substantially; and both the Union Pacific Complaint and the Wisconsin Central Complaint are susceptible to disposition in a single proceeding. The defendants are identical in both the Union Pacific Complaint and the Wisconsin Central Complaint and consolidation and reassignment should not only permit but enhance, the ability of the defendants to answer or to file motions in lieu of answer.

WHEREFORE, the Union Pacific Railroad Company prays (1) that pursuant to 28 U.S.C.A. Rule 42 and the Local Rules 40.4(a) and 40.4(b) of the United States District Court for the Northern District of Illinois, Eastern Division, that this Court find that Union Pacific's motion under Local Rule 40.4(c) demonstrates in sufficient detail the points of commonality in

both the Union Pacific Complaint and the Wisconsin Central Complaint to indicate that the cases are related within the meaning of Section (a) of Local Rule 40.4 and that the conditions required by Section (b) of Local Rule 40.4 have been met; and (2) that this Court grant Union Pacific's Motion for Reassignment and Consolidation of Related Cases to this Court.

UNION PACIFIC RAILROAD COMPANY

By: 

Mack H. Shumate, Jr.  
One of Its Attorneys

Mack H. Shumate, Jr. (#02595532)  
Attorney for Plaintiff  
Union Pacific Railroad Company  
101 North Wacker Drive, Room 1920  
Chicago, IL 60606  
312/777-2055  
312/777-2065 (Fax)

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNION PACIFIC RAILROAD )  
COMPANY, a Delaware )  
corporation, )  
 )  
Plaintiff, )  
 )  
vs. )  
 )  
THE CITY OF DES PLAINES, an )  
Illinois municipal corporation )  
KEVIN K. WRIGHT, TERRY S. )  
HARVIL, EDWARD C. HURLEY and )  
MARY FRANCES SQUIRES, in their )  
capacity as Commissioners of )  
the Illinois Commerce )  
Commission, )  
 )  
Defendants. )

CASE NO. 03000555

JUDGE ANDERSEN

MAGISTRATE JUDGE ASHMAN

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

NOW COMES the plaintiff, UNION PACIFIC RAILROAD COMPANY,  
("Union Pacific"), by and through its attorney, Mack H. Shumate,  
Jr., and for its complaint against defendants City of Des  
Plaines, ("Des Plaines"), Kevin K. Wright, Terry S. Harvill,  
Edward C. Hurley and Mary Frances Squires, ("Wright, Harvill,  
Hurley and Squires"), states as follows:

Parties

1. Plaintiff, Union Pacific, is a corporation  
organized under the laws of the State of Delaware, with its  
principal place of business in Omaha, Nebraska. Union Pacific  
is engaged in the business of providing interstate rail freight  
service. Union Pacific owns track, right-of-way and other



property and operates as a rail carrier in the State of Illinois.

2. Defendant, Des Plaines, is a municipal corporation organized under the laws of the State of Illinois and located in Cook County, Illinois.

3. Defendants Wright, Harvill, Hurley and Squires are the duly-appointed commissioners of the Illinois Commerce Commission, ("ICC"), and are being sued in that capacity. The ICC is an administrative agency established pursuant to 220 ILCS § 5/2-101, et seq. As commissioners of the ICC, Wright, Harvill, Hurley and Squires are charged with carrying out the ICC's duties and responsibilities and enforcing various statutes relating to, *inter alia*, rail carriers operating in the State of Illinois. One of the statutes which the ICC has responsibility for enforcing is 625 ILCS § 5/18c-7401, which provides in pertinent part that the ICC has the authority to require the "reconstruction . . . of any railroad across any highway . . . whether such crossing be at grade or by overhead structure or by subways." In other words, the ICC is given the authority upon filing of a petition or complaint or upon its own motion, *inter alia*, to require a railroad to reconstruct a bridge or viaduct owned by the railroad and used to carry the railroad's track over a highway. The ICC is also given the authority to require that the railroad pay part or all of the cost of the

reconstruction even where the reconstruction is not necessary for safe railroad operations.

#### **Jurisdiction and Venue**

4. The Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331 in that it involves an action arising under the Constitution and laws of the United States. The Court also has jurisdiction over this case pursuant to 28 U.S.C. § 1337 in that it involves an action arising under an Act of Congress regulating commerce, specifically, the ICC Termination Act of 1995, ("ICCTA"), Pub. L. 104-88, 109 Stat. 806.

5. Venue over this case is proper in this district pursuant to 28 U.S.C. § 1391(b) since a substantial portion of the events giving rise to Union Pacific's claim occurred in this district and the property that is the subject of this action is situated in this district.

#### **Material Facts**

6. Wisconsin Central, Ltd., also an interstate rail carrier, owns and operates a rail line, ("WCL Line"), consisting of one track that runs through Des Plaines primarily in a north-south direction.

7. Union Pacific owns and operates a rail line consisting of two tracks, (the "UP Line"), that intersect with and cross the WCL Line.

8. This crossing of the UP Line and WCL Line is located at what is commonly known as a diamond, (for the shape created by the crossing of the tracks). The diamond sits on top of a viaduct or bridge, (the "Railroad Bridge"), which runs over U.S. Route 14 in Des Plaines. U.S. Route 14 is a roadway under the jurisdiction of the Illinois Department of Transportation, ("IDOT").

9. UP and WCL own the Railroad Bridge. UP regularly maintains the Railroad Bridge, with UP and WCL sharing the cost of maintenance.

10. On May 21, 2001, Des Plaines instituted an action before the ICC requesting that UP and WCL construct minor "alterations" to the Railroad Bridge to prevent debris from falling onto U.S. Route 14. This proceeding was docketed as Case No. T01-0039 before the ICC.

11. In response to Des Plaines' petition before the ICC, UP, with the support of WCL, has performed a significant amount of work on the Railroad Bridge in an effort to prevent debris from falling onto U.S. Route 14. In addition, in order to resolve the concerns that prompted Des Plaines to institute its action at the ICC, UP and WCL have agreed with Des Plaines to perform additional work at their expense that will prevent debris from falling onto U.S. Route 14 in the future.

12. On October 30, 2002, at a meeting unrelated to the pending proceeding before the ICC, IDOT presented a proposal

to Des Plaines, UP and others that called for a realignment of U.S. Route 14 and the replacement of the Railroad Bridge with two new bridges to carry rail traffic over the realigned U.S. Route 14. The proposal was part of a plan developed by IDOT to make improvements to U.S. Route 14 so as to improve the flow of traffic on the highway for the benefit of motorists using the highway.

13. In its proposal, IDOT called for IDOT to pay one-third of the cost and UP and WCL to pay two-thirds of the cost of replacing the Railroad Bridge with the two new bridges.

14. On December 10, 2002, UP sent a letter to IDOT, with a copy to numerous other parties, including Des Plaines, rejecting IDOT's proposal. UP explained that since the proposal was primarily a highway project with little, if any, benefit to UP and WCL, the proposed cost division was unacceptable. UP also informed IDOT that the Railroad Bridge has, at a minimum, a twenty (20) year life remaining and does not need to be replaced for purposes of safe railroad operations.

15. After receiving UP's letter, Des Plaines informed UP and WCL that UP's position was unacceptable and demanded that the railroads agree to replacement of the Railroad Bridge. Des Plaines also informed UP and WCL that it would seek leave to amend its petition in Docket T01-0039 to ask that the ICC order UP and WCL, at their sole expense, to replace the Railroad Bridge with two new bridges as proposed by IDOT.

16. On January 14, 2003, the hearing officer assigned to conduct the proceedings in Docket T01-0039 denied Des Plaines' request for leave to amend its petition, informing Des Plaines that if it wished to seek an Order from the ICC requiring reconstruction of the Railroad Bridge, it would have to file a new petition.

17. Unless enjoined by this Court, Des Plaines will file such a petition with the ICC.

18. The ICCTA became law on January 1, 1996. Among other things, the ICCTA amended and recodified the Interstate Commerce Act, 49 U.S.C. § 10101, *et seq.* As amended by the ICTA, 49 U.S.C. § 10501(b) gives the Surface Transportation Board, ("STB"), exclusive jurisdiction over transportation by rail carriers, such as UP, and the rail facilities of such carriers, including the Railroad Bridge. Section 10501(b), as amended by the ICCTA, contains an express preemption provision that provides that state regulation of interstate rail carriers such as UP is preempted.

#### Claim for Relief

19. As a result of Des Plaines' threat to file a petition with the ICC and seek an order directing UP and WCL to replace the Railroad Bridge as proposed by IDOT at their sole expense, there is a case of actual controversy between UP, on the one hand, and Des Plaines and Wright, Harvill, Hurley and



Squires, on the other hand, that is appropriate for the Court to resolve by declaratory judgment pursuant to 28 U.S.C. § 2201.

20. UP is entitled to a declaratory judgment in its favor determining that the authority granted to the ICC by 625 ILCS § 5/18c-7401 has been preempted by 49 U.S.C. § 10501(b), as amended by the ICCTA, to the extent that that authority may be used to require UP to replace the Railroad Bridge as proposed by IDOT and Des Plaines.

21. Unless enjoined by the Court, Des Plaines will begin a proceeding at the ICC pursuant to 625 ILCS § 5/18c-7401 and the ICC, acting through Wright, Harvill, Hurley and Squires, will proceed to determine whether to order UP to replace the Railroad Bridge with two new railroad bridges at UP's expense. UP will sustain injury to its property as a result of such actions.

22. UP lacks an adequate remedy at law.

WHEREFORE, Union Pacific prays that the Court enter judgment in its favor and against defendants Des Plaines, Wright, Harvill, Hurley and Squires:

1. Declaring that 49 U.S.C. § 10501(b), as amended by the ICCTA, preempts the authority granted to the ICC under 625 ILCS § 5/18c-7401 to the extent such authority is used to

require UP at its expense to replace the Railroad Bridge as proposed by IDOT and Des Plaines.

2. Enjoining defendants from taking any action that would require UP to replace the Railroad Bridge with two new railroad bridges;

3. Awarding Union Pacific its costs in bringing this action; and

4. Awarding Union Pacific such further relief as may be deemed appropriate by the Court.

Dated: January 24, 2003

UNION PACIFIC RAILROAD COMPANY

By: 

Mack H. Shumate, Jr.,  
One of Its Attorneys

Mack H. Shumate, Jr.  
Attorney for Union Pacific Railroad Company  
101 North Wacker Drive, Suite 1920  
Chicago, IL 60606  
312/777-2055

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T-01-0039)

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

RECEIVED

WISCONSIN CENTRAL LTD.,  
an Illinois corporation,

Plaintiff,

vs.

THE CITY OF DES PLAINES, an Illinois  
municipal corporation, KEVIN K. WRIGHT,  
TERRY S. HARVILL, EDWARD C.  
HURLEY and MARY FRANCES SQUIRES,  
in their capacity as Commissioners of the  
Illinois Commerce Commission,

Defendants.

JAN 24 2003

MICHAEL W. DOBBINS  
CLERK, U.S. DISTRICT COURT

Case No. 03 C 00060

Judge Zagel

Magistrate Judge Geraldine Soat Brown

NOTICE OF FILING

To: See Attached Certificate of Service

PLEASE TAKE NOTICE that on the 24th day of January, 2003, we have filed  
with the Clerk of the United States District Court, Northern District of Illinois, plaintiff's  
Amended Complaint for Declaratory and Injunctive Relief, a copy of which is attached  
hereto.

WISCONSIN CENTRAL LTD.

By: James A. Fletcher  
One of Its Attorneys

Of Counsel:

James A. Fletcher  
Fletcher & Sippel LLC  
Two Prudential Plaza, Suite 3125  
180 North Stetson Avenue  
Chicago, Illinois 60601-6721  
Telephone: (312) 540-0500  
Facsimile: (312) 540-9098

RECEIVED

JAN 28 2003

LAW DEPARTMENT  
UNION PACIFIC RR CO.



**CERTIFICATE OF SERVICE**

The undersigned states that on the 24th day of January, 2003, he caused a copy of plaintiff's Amended Complaint for Declaratory and Injunctive Relief to be served upon:

Mayor Anthony W. Arredia  
City of Des Plaines  
1420 Miner Street  
Des Plaines, IL 60016

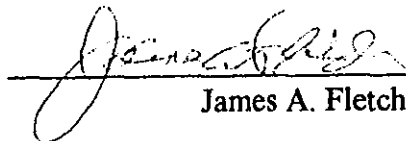
Mr. Kevin K. Wright  
Chairman  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701

Mr. Terry S. Harvill  
Commissioner  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701

Mr. Edward C. Hurley  
Commissioner  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701

Ms. Mary Frances Squires  
Commissioner  
Illinois Commerce Commission  
527 East Capitol Avenue  
Springfield, IL 62701

by depositing a copy of same in the United States Mail at 180 North Stetson Avenue, Chicago, Illinois, before the hour of 5:00 p.m.

  
James A. Fletcher

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

RECEIVED

WISCONSIN CENTRAL LTD.,  
an Illinois corporation,

Plaintiff,

vs.

THE CITY OF DES PLAINES, an Illinois  
municipal corporation, KEVIN K. WRIGHT,  
TERRY S. HARVILL, EDWARD C.  
HURLEY and MARY FRANCES SQUIRES,  
in their capacity as Commissioners of the  
Illinois Commerce Commission,

Defendants.

Case No. 03 C 00060

Judge Zagel

Magistrate Judge Geraldine Soat Brown

MICHAEL W. DUNN  
CLERK, U.S. DISTRICT COURT

**AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff Wisconsin Central Ltd. ("WCL"), by its attorneys and for its amended complaint against defendants City of Des Plaines ("Des Plaines"), Kevin K. Wright, Terry S. Harvill, Edward C. Hurley and Mary Frances Squires, states as follows:

**Parties**

1. Plaintiff WCL is a corporation organized under the laws of the State of Illinois with its principal place of business in Rosemont, Illinois. WCL is engaged in the business of providing interstate rail freight service. WCL owns track, right-of-way and other property and operates as a rail carrier in the State of Illinois.

2. Defendant Des Plaines is a municipal corporation organized under the laws of the State of Illinois and located in Cook County, Illinois.

3. Defendants Wright, Harvill, Hurley and Squires are the duly-appointed commissioners of the Illinois Commerce Commission ("ICC") and are being sued in that capacity. The ICC is an administrative agency established pursuant to 220 ILCS § 5/2-101, et seq. As commissioners of the ICC, Wright, Harvill, Hurley and Squires are charged with carrying out the ICC's duties and responsibilities and enforcing various statutes relating to, inter alia, rail carriers operating in the State of Illinois. One of the statutes which the ICC has responsibility for enforcing is 625 ILCS § 5/18c-7401, which provides in pertinent part that the ICC has the authority to require the "reconstruction . . . of any railroad across any highway . . . whether such crossing be at grade or by overhead structure or by subway." In other words, the ICC is given the authority upon filing of a petition or complaint or upon its own motion, inter alia, to require a railroad to reconstruct a bridge or viaduct owned by the railroad and used to carry the railroad's track over a highway. The ICC is also given the authority to require that the railroad pay part or all of the cost of the reconstruction even where the reconstruction is not necessary for safe railroad operations.

#### **Jurisdiction and Venue**

4. The Court has jurisdiction over this case pursuant to 28 U.S.C. § 1331 in that it involves an action arising under the Constitution and laws of the United States. The Court also has jurisdiction over this case pursuant to 28 U.S.C. § 1337 in that it involves an action arising under an Act of Congress regulating commerce, specifically, the ICC Termination Act of 1995 ("ICCTA"), Pub. L. 104-88, 109 Stat. 806.

5. Venue over this case is proper in this district pursuant to 28 U.S.C. § 1391(b) since a substantial portion of the events giving rise to WCL's claim occurred in this district and the property that is the subject of this action is situated in this district.

### **Material Facts**

6. WCL owns and operates a rail line ("WCL Line") consisting of one track that runs through Des Plaines primarily in a north-south direction.

7. While running through Des Plaines, the WCL Line crosses at-grade a rail line consisting of two tracks owned by the Union Pacific Railroad Company ("UP"), also an interstate rail carrier. The rail line of the UP will be referred to as the "UP Line."

8. This crossing of the UP Line and WCL Line is located at what is commonly known as a diamond (for the shape created by the crossing of the tracks). The diamond sits on top of a viaduct or bridge ("the Bridge") which runs over U.S. Route 14 in Des Plaines. U.S. Route 14 is a roadway under the jurisdiction of the Illinois Department of Transportation ("IDOT").

9. UP and WCL own the Bridge. UP regularly maintains the Bridge, with WCL and UP sharing the cost of maintenance.

10. On May 21, 2001, Des Plaines instituted an action before the ICC requesting that UP and WCL construct minor "alterations" to the Bridge to prevent debris from falling onto U.S. Route 14. This proceeding was docketed as Case No. T01-0039 before the ICC.

11. In response to Des Plaines' petition before the ICC, UP, with the support of WCL, has performed a significant amount of work on the Bridge in an effort to prevent debris from falling onto U.S. Route 14. In addition, in order to resolve the concerns that prompted Des Plaines to institute its action at the ICC, UP and WCL have agreed with Des Plaines to perform additional work at their expense that will prevent debris from falling onto U.S. Route 14 in the future.

12. On October 30, 2002, at a meeting unrelated to the pending proceeding before the ICC, IDOT presented a proposal to Des Plaines, UP, and others that called for a realignment of U.S. Route 14 and the replacement of the Bridge with two new bridges to carry rail traffic over the realigned U.S. Route 14. The proposal was part of a plan developed by IDOT to make improvements to U.S. Route 14 so as to improve the flow of traffic on the highway for the benefit of motorists using the highway.

13. In its proposal, IDOT called for IDOT to pay one-third of the cost and UP and WCL to pay two-thirds of the cost of replacing the Bridge with the two new bridges.

14. On December 10, 2002, UP sent a letter to IDOT, with a copy to numerous other parties, including Des Plaines, rejecting IDOT's proposal. UP explained that since the proposal was primarily a highway project with little, if any, benefit to UP and WCL, the proposed cost division was unacceptable. UP also informed IDOT that the Bridge has, at a minimum, a twenty-year life remaining and does not need to be replaced for purposes of safe railroad operations.

15. After receiving UP's letter, Des Plaines informed UP and WCL that UP's position was unacceptable and demanded that the railroads agree to replacement of the Bridge. Des Plaines also informed UP and WCL that it would seek leave to amend its petition in Docket T01-0039 to ask that the ICC order UP and WCL, at their sole expense, to replace the Bridge with two new bridges as proposed by IDOT.

16. On January 14, 2003, the hearing officer assigned to conduct the proceedings in Docket T01-0039 denied Des Plaines' request for leave to amend its petition, informing Des Plaines that if it wished to seek an Order from the ICC requiring reconstruction of the bridge, it would have to file a new petition.



17. Unless enjoined by this Court, Des Plaines will file such a petition with the ICC.

18. The ICCTA became law on January 1, 1996. Among other things, the ICCTA amended and recodified the Interstate Commerce Act, 49 U.S.C. § 10101, *et seq.* As amended by the ICTA, 49 U.S.C. § 10501(b) gives the Surface Transportation Board ("STB") exclusive jurisdiction over transportation by rail carriers, such as WCL, and the facilities of such carriers, including the Bridge. Section 10501(b), as amended by the ICCTA, contains an express preemption provision that provides that state regulation of interstate rail carriers such as WCL is preempted.

#### **Claim for Relief**

19. As a result of Des Plaines' threat to file a petition with the ICC and seek an order directing UP and WCL to replace the Bridge as proposed by IDOT at their sole expense, there is a case of actual controversy between WCL, on the one hand, and Des Plaines and Wright, Harvill, Hurley and Squires, on the other hand, that is appropriate for the Court to resolve by declaratory judgment pursuant to 28 U.S.C. § 2201.

20. WCL is entitled to a declaratory judgment in its favor determining that the authority granted to the ICC by 625 ILCS § 5/18c-7401 has been preempted by 49 U.S.C. § 10501(b), as amended by the ICCTA, to the extent that that authority may be used to require WCL and UP to replace the Bridge as proposed by IDOT and Des Plaines.

21. Unless enjoined by the Court, Des Plaines will begin a proceeding at the ICC pursuant to 625 ILCS § 5/18c-7401 and the ICC, acting through Wright, Harvill, Hurley and Squires, will proceed to determine whether to order WCL and UP to replace the Bridge with two new railroad bridges at WCL's and UP's expense. WCL will sustain injury to its property as a result of such actions.

22. WCL lacks an adequate remedy at law.

WHEREFORE, WCL prays that the Court enter judgment in its favor and against defendants Des Plaines, Wright, Harvill, Hurley and Squires:

1. Declaring that 49 U.S.C. § 10501(b), as amended by the ICCTA, preempts the authority granted to the ICC under 625 ILCS § 5/18c-7401 to the extent such authority is used to require WCL and UP at their expense to replace the Bridge as proposed by IDOT and Des Plaines;

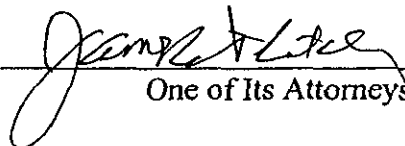
2. Enjoining defendants from taking any action that would require WCL to replace the Bridge with two new railroad bridges;

3. Awarding WCL its costs in bringing this action; and

4. Awarding WCL such further relief as may be deemed appropriate by the Court.

Dated: January 23, 2003

WISCONSIN CENTRAL LTD.

By: \_\_\_\_\_  
One of Its Attorneys

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